

**ORDER ON I.A. No. I**

The advocate for the appellant has filed this application under Section 5 of Limitation Act for condonation of delay of 162 days in preferring the appeal.

2. The GPA holder of the appellant has sworn to the affidavit filed with application and stated that,

the trial Court has dismissed OS No. 74/2011 on 21.03.2023. He has stated that, 162 days has been caused in preferring the appeal after making consultation with the villagers regard to the impugned judgment and decree. He has stated that, there is merits in the appeal and no prejudice would be caused to the respondents if the appeal is admitted by condoning the delay.

3. The advocate for the respondents has filed objections and contended that, no proper reasons has been made out to condone the delay. Further, it is stated that, the appeal is devoid of merits and it has been filed only to give trouble to the respondents. Therefore, it is requested to dismiss the application with cost.

4. Having heard the submissions of both side, I have carefully perused the application, objection and records.

5. Following points would arise for my consideration:

1) Whether the appellant has made out sufficient cause for condonation of delay in preferring the appeal?

2) What order?

6. I have answered above points as below:

Points No. 1 : In the affirmative

Point No. 2: As per final order

for the following:

### **REASONS**

7. **Point No. 1:** The appellant is the plaintiff in the trial court. The plaintiffs have filed the suit in representative for declaration that, the suit property is 'Garadi Mane' meant for general public of Anavatti Village and to restrain the defendants from interfering with possession of the suit property by general public of Anavatti Village by putting up structure on foundation existing in the suit property. In the affidavit enclosed with the application, the GPA holder of the plaintiff has stated that, there is 162 days delay in preferring the appeal as it was filed after consultation with the villagers. In the objections, the counsel for the

respondents has contended that, no proper reasons has been made out to condone the delay.

8. As per the provision under Article 116 of the Limitation Act 1963, the period of limitation for preferring such appeal is 30 days. It is from the date of decree of the trial Court. As per provision under Section 3(1) of the limitation Act, subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Further, as per Section 5 of the Limitation Act, any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Now, it is well settled that, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as

to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of the delay. This principle of law has been laid down by the Hon'ble Apex Court, in case of G. Ramagowda V.s Special Land Acquisition Officer, AIR 1988 SC 897.

9. Keeping in the mind, the principle of law laid down in the judgment of Hon'ble Apex Court referred above, I have carefully perused the affidavit of the GPA holder of the appellant. I did not find any reason to disbelieve the reasons given by the appellant for the delay caused in preferring the appeal. Further, I did not find any gross negligence or deliberate inaction on the part of the appellant herein. Therefore, in my considered view, the appellant has made out sufficient cause for condonation of delay. Any inconvenience caused to the respondents by not preferring the appeal within prescribed time may

be compensated in terms of cost. Therefore, considering the facts and circumstances of the case and reasons given for the delay, I have answered point No.1 in affirmative.

10. **Point No.2:** In view of my answer to Point No. 1, I proceed to pass following:

### **ORDER**

IA No. I filed under Section 5 of the Limitation Act is hereby allowed on cost of ₹.500/-.

The delay caused in preferring the appeal is hereby condoned.

Call for trial court records, for arguments.

Senior Civil Judge & JMFC.,  
Soraba.